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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: TERRORIST ATTACKS OF  
SEPTEMBER 11, 2001

03 MDL 1570 (GBD) (SN)

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New York, N.Y.  
May 1, 2017  
1:30 p.m.

Before:

HON. SARAH NETBURN,

U.S. Magistrate Judge

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(In chambers)

THE COURT: Good afternoon, this is Judge Netburn.

I am here with my law clerk and a court reporter.

What I am going to do is ask that any party that intends to speak to state their appearance. If you do not state your appearance and later you feel compelled to put something on the record, you can just state your appearance at that time. Let me also remind everybody of the rules, which include that you identify yourself before you speak, even if you have been speaking for a while, so that we make sure we are properly attributing your statements and that parties be respectful of one another to avoid speaking over somebody. I know that is harder to do without the visual cues of body language.

With that let me ask who is on the phone on behalf of the plaintiffs.

MR. CARTER: Your Honor, Sean Carter from Cozen O'Connor on behalf of the plaintiffs' executive committee.

MR. HAEFELE: Robert Haefele, Motley Rice, for the plaintiffs' executive committee.

MR. KREINDLER: Jim Kreindler, also for the plaintiffs' executive committee.

MR. LoPALO: Chris LoPalo Napoli Shklonik on behalf of the plaintiffs represented by Napoli Shkolnik.

Anybody else on behalf of the plaintiffs?

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1 MR. SHEPS: Robert Sheps from the Sheps Law Firm,  
2 concerning the Charter Oak plaintiffs.

3 THE COURT: On behalf of the defendants who is on the  
4 phone?

5 MR. COTTREAU: Good afternoon, your Honor, Steve  
6 Cottreau on behalf of Dubai Islamic Bank. I will try to answer  
7 the questions you have for defendant in merits discovery.

8 MR. KABAT: Alan Kabat, for (unintelligible).

9 MR. BERGER: Good afternoon, your Honor. Mitchell  
10 Berger from Squire Patton Boggs for National Commercial Bank if  
11 your Honor has questions about the three defendants in the  
12 Lloyd's cases, I will try to deal with those.

13 THE COURT: Good afternoon, your Honor. Peter  
14 Salerno, for defendant Kadi. I don't know if I am going to  
15 speak, but I am here.

16 MR. KRY: Robert Kry with Mololamken for defendant  
17 Dallah Avco.

18 MR. MOHAMMEDI: Omar T. Mohammedi on behalf of Wamy  
19 International.

20 THE COURT: OK.

21 So I wanted to put people on the phone because this is  
22 in connection with the April 14 letter and how to proceed with  
23 respect to the nonsovereign defendants. I was a little bit  
24 confused as to what was being proposed.

25 What I am not confused about is the idea that

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1 different defendants are in different postures, and, therefore,  
2 it makes sense to treat them differently. Therefore, to the  
3 extent there is going to be a consolidated amended complaint to  
4 be filed, which I think is a good idea, that it may be  
5 appropriate to have certain defendants respond in the ordinary  
6 course and other defendants to have their time to respond  
7 stayed, specifically, those defendants in jurisdictional  
8 discovery.

9 But what was unclear to me was exactly what the  
10 consolidated amended complaint or complaints would look like,  
11 because the way I read this letter it seems to suggest that  
12 there will be multiple different complaints filed, and  
13 obviously we only want one operative complaint in every case.

14 So I wanted to have a conversation to see exactly what  
15 the parties were contemplating. I am prepared to approve some  
16 sort of schedule with a consolidated amended complaint being  
17 filed and certain defendants to respond and other defendants to  
18 stay their response, but it seems to me what is being proposed  
19 is something different for the merits discovery people versus  
20 the jurisdictional people versus the previously dismissed  
21 people.

22 I don't know who is going to take the lead from the  
23 plaintiff's executive committee, if they can give me a sense of  
24 what was being contemplated.

25 MR. CARTER: Your Honor, let me try and break out the

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1 cases a little bit in answering that question. The universe of  
2 defendants named in the various new actions differs between  
3 each of the cases.

4 And so, for instance, defendants NCB, Al Rahji Bank  
5 and Saudi Bin Laden Group are the only defendants in the  
6 Lloyd's action because they are named alongside a number of  
7 other defendants in some of the other cases. So my  
8 understanding was that those three defendants, for instance,  
9 were OK with the idea that the plaintiffs in each of the cases  
10 would file amended pleadings as to them in their individual  
11 actions, and that they would respond to those through a  
12 consolidated motion to dismiss. That being feasible  
13 principally because the allegations as to those defendants do  
14 not materially differ in the complaints filed in the individual  
15 actions.

16 So, with regard to those three, that was the  
17 contemplated approach. It would be difficult to file an  
18 omnibus consolidated amended complaint overreaching all of the  
19 cases simply due to the diversity of the universe of defendants  
20 named in each of them, and I suppose that the parties were  
21 trying to reach an alignment that would allow effectively  
22 similar pleadings as to the defendants in all of the cases, but  
23 not an omnibus consolidated complaint.

24 THE COURT: OK. I am still not quite sure I follow  
25 where we are picking up efficiencies here.

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1           In the newly filed complaints -- let's take not  
2           Lloyd's and not Charter Oak for now. Let's take the individual  
3           plaintiff cases, not the corporate cases, commercial cases.

4           Is the idea that there would be one consolidated  
5           amended complaint as to all of the defendants, both merits  
6           defendants, jurisdictional defendants, and previously dismissed  
7           defendants in those cases?

8           MR. BERGER: Your Honor, I know you are waiting to  
9           hear from plaintiffs on this, but this is Mitchell Berger for  
10          defendant NCB.

11          I thought that Mr. Napoli at the last status  
12          conference that we had with your Honor in March said it was  
13          their contemplation that they would take those four individual  
14          cases, which is Aguilar, Addesso, Aiken, and Hodges, and  
15          replace the four separate complaints, which are essentially  
16          mirror images of one another, with a single consolidated  
17          complaint. Certainly that is for them to address.

18          MR. LoPALO: Your Honor, we have four filed complaints  
19          at this time, and the allegations in each complaint are  
20          identical for these nonsovereign defendants. So for efficiency  
21          reasons I see no reason why the defense couldn't just refer to  
22          my first-filed complaint and file motions on that complaint,  
23          and such motions will then be applicable to all of my other  
24          complaints.

25          THE COURT: OK. Well that certainly is efficient in

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1 your four actions, but I thought the purpose of what was being  
2 proposed by the executive committees was that there would be, I  
3 thought much like we are doing in the Saudi Arabia context,  
4 that we were coming up with a coordinated consolidated amended  
5 complaint that these new cases could follow and any case that  
6 comes thereafter would just join.

7 MR. CARTER: Your Honor, part of the difficulty was  
8 that various of the defendants also had different approaches as  
9 to how they wanted to proceed. We were obviously trying to do  
10 as much of this by agreement as possible.

11 Again, as, for instance, we understood that the three  
12 defendants in the Lloyd's actions were happy to respond to all  
13 of the separate complaints through a single consolidated motion  
14 because they tracked one another, and that seemed like the most  
15 efficient way to deal with those three defendants. The merits  
16 and jurisdictional discovery defendants had a slightly  
17 different approach in mind. I suppose we could go back to the  
18 drawing board a bit and try to work through master pleadings as  
19 to the defendants. We may just have to file more than one in  
20 order to reach that objective because of the difference in the  
21 scope of the defendants being named in each of the cases.

22 THE COURT: Right.

23 When I looked at the letter that was filed, it seems  
24 to me that there are multiple different times for which an  
25 amended complaint would be filed. So, for instance, I thought

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1 what you were proposing was that, with respect to the merits  
2 discovery defendants, that a consolidated amended complaint  
3 would be filed within 45 days, that that complaint would cover  
4 any case that was filed since 2016 going forward, and that the  
5 defendants would then have 90 days to respond.

6 But, in addition to that, there was also a proposal  
7 that there be an amended complaint filed by today for those  
8 five defendants who have been previously dismissed from these  
9 cases. Obviously, we can't have more than one operative  
10 complaint in a given action, so I don't understand how the  
11 consolidated amended complaint that's proposed that deals with  
12 defendants who are currently in merits discovery relates to the  
13 proposed amended complaint to be filed today for those  
14 defendants who were previously dismissed and that dismissal was  
15 affirmed by the circuit.

16 MR. CARTER: Your Honor, in this instance I am going  
17 to have to defer a bit to the plaintiffs in the cases that have  
18 defendants beyond those named in the Lloyd's action.  
19 Obviously, the discussion we had which goes back some time, was  
20 about amending the complaint as to those defendants, which we  
21 were prepared to do today, and then there were ongoing  
22 negotiations between plaintiffs in the other cases and the  
23 merits and jurisdictional discovery defendants about issues  
24 ranging from service and amendments.

25 So I'm not exactly a hundred percent clear on how they



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1 were reconciling the amendments as to the three defendants and  
2 the merits and jurisdictional discovery defendants in those  
3 other cases.

4 MR. SHEPS: Your Honor, we recently filed suit since  
5 the time of the last conference. From our perspective I guess  
6 we have been waiting to see what works best for your Honor and  
7 for the Court in terms of joining any sort of amended  
8 complaint. For instance, against the kingdom, I know there is  
9 a process, there were several submissions that were made and  
10 likewise, if there are any amended complaints with respect to  
11 certain defendants that are anticipated, such as NCB, Al Rahji  
12 Bank, those defendants in the Lloyd's case, we would also seek  
13 to amend the complaint to follow form to make it more  
14 convenient.

15 I also understand there were certain discussions as to  
16 accepting of service. I am not sure if that has been  
17 completely finalized yet, but from our perspective I think we  
18 are just waiting to see what works best for the Court. For  
19 instance, my clients never sued the kingdom. We are happy to,  
20 you know, once we have the authority, to sign to the  
21 consolidated amended complaint and likewise, since if there's  
22 something to sign on, some sort of notice to conform, for the  
23 three defendants in the Lloyd's case we are happy to do that as  
24 well.

25 I think from our perspective we are just waiting to

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1 see what works best for the Court.

2 MR. LoPALO: Judge, I have no intentions on filing any  
3 amendments today for the nonsovereign defendants. If there  
4 will be a consolidated massive complaint for the nonsovereign  
5 defendants, then we would like the opportunity to maybe adopt  
6 it.

7 MR. SHEPS: We would be in the same position. If  
8 something is filed today, we would like to take a look at it  
9 and then, presuming there is approval, we would sign on to that  
10 for efficiency purposes.

11 THE COURT: Mr. Carter, if I can ask you what I had  
12 thought was being planned, but you and your colleagues have  
13 thought about this probably much more than I have, but what I  
14 thought was going to be proposed would be that there was a  
15 consolidated amended complaint that deals only with the  
16 nonsovereign defendants, and we could do something like we have  
17 done with the Saudi Arabia case, was there was a consolidated  
18 complaint that people can just join on to through the  
19 short-form complaint process, and so what I thought was going  
20 to be proposed would that there would be a similar consolidated  
21 amended complaint with all of the allegations against all of  
22 the nonsovereign defendants, each plaintiff presumably could  
23 elect to only proceed as against certain defendants if they  
24 didn't have claims against other defendants, and then once that  
25 consolidated amended complaint was filed, we could have a

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1 conversation about the defendants' time to respond.

2 So, for example, I would be fine giving the  
3 jurisdictional defendants a stay of their response because they  
4 are in the middle of jurisdictional discovery. It doesn't seem  
5 to make sense to have them move to dismiss now since everybody  
6 is focused on their on the jurisdictional issue, but with  
7 respect to other defendants maybe it makes sense for them to  
8 file their response to the complaint.

9 MR. CARTER: Your Honor, in principle, I don't think  
10 we have an objection to trying to go down that road again.  
11 Part of that difficulty was precipitated by the fact that  
12 certain of the defendants who had previously been dismissed  
13 were interested in getting on a particular track to move  
14 forward more quickly, whereas other of the defendants had been  
15 newly named in actions and hadn't reached that same sort of  
16 point in their calculus.

17 We would obviously have to sort of take a step back to  
18 reengineer the amended pleadings a little bit, and part of the  
19 difficulty is that we have defendants being named in some of  
20 the new actions aren't named in any new executive committee  
21 filed complaints, but I am sure we can work through all of  
22 that. It just might take a few more weeks.

23 THE COURT: Was the proposal that is set forth in the  
24 April 14 letter to have multiple new cases filed?

25 MR. CARTER: No, your Honor, the proposal that was in

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1 the April 14 letter was simply for there to be amended  
2 complaints in each of the individual actions as to the universe  
3 of defendants named in those cases rather than a consolidated  
4 amended complaint overarching all of the individual actions.

5 THE COURT: Is anything being proposed to address any  
6 future filed complaints?

7 MR. CARTER: Your Honor, we had not gone down that  
8 road with regard to this universe of defendants because we had  
9 not received an outreach from new counsel indicating the same  
10 intent to file new claims against these defendants as we had  
11 received with regard to the kingdom. Again, we can take a step  
12 back and try to reach an omnibus pleading.

13 THE COURT: OK. I apologize if I am being dense here,  
14 but can you explain to me then, Mr. Carter, what you are  
15 proposing in the April 14 letter?

16 MR. CARTER: Your Honor, there were essentially, if I  
17 recall correctly, five new actions addressed in the April 14  
18 letter. The intent of that letter was simply to propose  
19 deadlines for amending the complaints in those five actions and  
20 for the defendants in those five actions to move to dismiss or  
21 otherwise respond to the pleadings and also to address service  
22 in those five actions.

23 The discussion did not at any point involve the  
24 creation of consolidated amended complaints that cut across all  
25 five of those.

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1 THE COURT: OK.

2 MR. COTTREAU: Your Honor, at least for the merits  
3 discovery, that's not my understanding of what we had agreed.  
4 What we had agreed was, with respect to those five defendants  
5 in merits discovery and with respect to the five complaints  
6 against those that there will be a single new consolidated  
7 complaint filed 45 days.

8 Where I get that from is, if you look at page 2 of our  
9 letter, it's the third paragraph on that page, it says in the  
10 first sentence, will file a single consolidated complaint  
11 within 45 days. The purpose of that was to, like the kingdom  
12 to make it easier to respond to a single set of alligations for  
13 the five merits defendants.

14 THE COURT: Thank you, Mr. Cottreau.

15 I read the exact same part of the letter suggesting  
16 there was going to be a consolidated amended complaint, but  
17 obviously there can only be one operative complaint.

18 So it was unclear to me, because later in the letter  
19 it refers to other complaints being filed. It wasn't clear to  
20 me at all what was actually being proposed here.

21 MR. COTTREAU: Your Honor, I don't think that the  
22 parties proceeded with the view, at least I certainly didn't,  
23 that there could only be one consolidated complaint for the new  
24 actions. I thought what the parties at least had contemplated,  
25 and if you want to correct us we're happy to be corrected, but

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1 that there could be a set of consolidated allegations in  
2 different documents that would be operative in this case as to  
3 those, as to the various groups of parties, that it would be  
4 more efficient to organize it that way.

5 THE COURT: Do the federal rules allow you to have  
6 more than one complaint in a case that's the operative  
7 complaint?

8 MR. COTTREAU: It is a good question, your Honor. It  
9 is one that I don't know the answer to.

10 MR. BERGER: Your Honor, let me try to address this  
11 from the defendants' point of view. I think first to answer  
12 your Honor's question, I thought what had happened in the cases  
13 against the Kingdom of Saudi Arabia is that indeed we do have  
14 more than one operative complaint. So, for example, the  
15 kingdom is a defendant in a number of lawsuits that have been  
16 brought also against the nonsovereign defendants, and yet you  
17 have an omnibus amendment as to the kingdom that has already  
18 been filed which is the subject of previous proceedings.  
19 Whether that is a good way or a bad way, I just wanted to  
20 address your Honor's question.

21 However, from our standpoint, particularly from the  
22 standpoint of the previously dismissed defendants, what we have  
23 been looking for was the benefit of consolidation. We did not  
24 think it was going to be possible to get the plaintiffs to file  
25 a single amended complaint in the currently seven and still

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1 counting I assume cases against the previously dismissed  
2 defendants.

3 So what we sought to achieve by way of the benefit of  
4 consolidation was having a consolidated motion to dismiss  
5 because, as Mr. Carter says, the allegations against the  
6 previously dismissed defendants are pretty much the same across  
7 all seven of those cases, and having consolidated opposition  
8 and a consolidated reply.

9 We would be perfectly happy if the plaintiffs could  
10 get their act together and file a single consolidated amended  
11 complaint against the previously dismissed defendants, because  
12 as you might imagine, your Honor, we have been there and done  
13 this already. We have already gone up to the Second Circuit  
14 and to the Supreme Court to get our clients dismissed, and we  
15 are not even anxious to do this one more time, but if we have  
16 to do it again, we should only do it one more time.

17 THE COURT: OK. I agree with everybody's interest  
18 here in streamlining and moving claims forward as quickly as  
19 possible. The proposal or proposals that are set forth in this  
20 April 14 letter are unclear to me, so I am going to ask that  
21 everybody go back to the well and come up with something that  
22 addresses some of my concerns.

23 I am unaware that you can have more than one operative  
24 complaint in a given case. If I'm wrong, I'm happy to be  
25 educated. One possibility, and what I sort of thought was what

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1 was being proposed was that there could be a set of  
2 consolidated claims against all of the defendants that are  
3 available and parties could elect which portion of that  
4 complaint they were joining. So a complaint could be clear  
5 enough that it is only as to, you know, I am only suing the  
6 merits discovery defendants and the jurisdictional defendants  
7 I'm not electing to sue, those defendants who have been  
8 previously been dismissed.

9 I guess the only thing that was not clear to me from  
10 this letter, and now I'm learning a little bit more, is it  
11 sounds like we think we are dealing with a much smaller number  
12 of cases than what I previously thought, and that, unlike with  
13 respect to the claims against Saudi Arabia, it sounds like the  
14 parties do not expect there to be a flood of new complaints  
15 brought against nonsovereign defendants.

16 If that's the case, then maybe we don't need an  
17 enormous omnibus complaint, but I think what's been proposed  
18 here, as far as I can understand it, doesn't make sense to me.

19 So I would like the parties to spend some more time  
20 trying to figure out a way to address everybody's interests,  
21 streamlining the allegations, allowing the defendants to  
22 respond in a consolidated and coordinated way.

23 Unless I'm told otherwise, I think having multiple  
24 complaints in a given action is neither feasible nor  
25 permissible.



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1 Can I ask that you all continue your conversation and  
2 get me a revised proposal on how to respond to these  
3 nonsovereign defendants by next Monday?

4 MR. CARTER: Your Honor, that is fine. I take it from  
5 that request that the deadline that had been proposed for  
6 amended pleadings in certain of the actions of May 1 has been  
7 displaced?

8 THE COURT: Yes.

9 MR. CARTER: Your Honor, one other point.

10 Mr. Berger had mentioned that there are separate  
11 complaints obviously against Saudi Arabia and the Saudi High  
12 Commission.

13 That is in large degree a function of the fact that  
14 those defendants were effectively severed from the rest of the  
15 cause by virtue of the entry of Rule 54(b) final judgments in  
16 their favor, which allowed for appeals to go forward and put  
17 them on an entirely different sort of track and severed those  
18 defendants from the remainder of the case, which is I think how  
19 we arrived at the propriety of that filing.

20 THE COURT: OK.

21 MR. SHEPS: Your Honor, we will work, the new  
22 plaintiffs and Mr. Napoli's office will work together with the  
23 executive committee to try to lay out some of our concerns and  
24 see what we can do to help out the process.

25 THE COURT: Thank you.

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1                   So I will wait for a letter on May 8. Anything  
2 further?

3                   Thank you.

4                   (Adjourned)